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Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

§ Civil Action No. H-01-3624
§ (Consolidated)

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

LEAD PLAINTIFF'S MOTION TO LIFT
DISCOVERY STAY FOR LIMITED PRODUCTION OF DOCUMENTS

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Since this litigation began last year, no document production has been made to Lead Plaintiff. However, the Court's Scheduling Order dated February 27, 2002, requires that relevant documents produced in certain related litigation be made available to Lead Plaintiff notwithstanding the discovery stay in this action. As the Court stated, the PSLRA "was not designed to keep secret from counsel in securities cases documents that have become available for review by means other than discovery in the securities case." Order at 4.

In response to a motion filed by Lead Plaintiff in the Enron bankruptcy litigation, Judge Gonzalez ordered the production of discovery as follows:

[T]he automatic stay imposed by 11 U.S.C. §362(a) shall be deemed modified to permit the Regents to file a motion before Judge Melinda Harmon in the *Newby* Class Action (*Newby v. Enron Corp.*, Case No. H-1-3624), requesting (i) the production of all documents produced and that may be produced by the Debtors pursuant to the order entitled Order Modifying Automatic Stay to Permit Certain Third Party Discovery to Be Obtained From Debtors dated May 15, 2002 entered by this Court; and (ii) transcripts of depositions, including the exhibits marked in depositions, that may be taken in the litigation styled J.P. Morgan Chase Bank et al. v. Liberty Mutual Insurance Co., et al. 01-CIV-15523 (JSR) (the "Surety Litigation").

In re Enron Corp., No. 01-16034 (AJG), Order at 1-2 (Bankr. S.D.N.Y. Sept. 13, 2002) (attached hereto).


The discovery Judge Gonzalez identified in his order is highly relevant to the subject matter of this action. A principal issue in the Surety Litigation referenced by Judge Gonzalez in his Order is whether transactions through J.P. Morgan Chase's "Mahonia" entity were loans by J.P. Morgan Chase to Enron disguised as natural gas trades. In the Surety Litigation, the sureties assert that the Mahonia transactions were loans disguised as natural gas trades and therefore the sureties are not liable for payment of claims relating to those transactions, which were insured as natural gas trades – not loans. Here, Lead Plaintiff alleges that in the Mahonia transactions, J.P. Morgan Chase disguised those loans as natural gas trades to bolster Enron's cash flow without reporting the liability of the loans. The discovery Judge Gonzalez allowed Lead Plaintiff, subject to this Court's Order, bears directly on the substance of these transactions.

Accordingly, Lead Plaintiff hereby moves the Court for an order lifting the discovery stay in this action to permit the production of documents consistent with Judge Gonzalez's Order dated September 13, 2002, and this Court's Scheduling Order.

DATED: September 23, 2002

Respectfully submitted,


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UNITED STATE BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: :
: Chapter 11
ENRON CORP., ET AL., :
: Case Nos. 01-16034 (AJG)
: :
: Debtors. Jointly Administered
-----X

**ORDER MODIFYING AUTOMATIC STAY
TO PERMIT THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA TO OBTAIN DOCUMENTS DEBTOR
PRODUCED RELATING TO MAHONIA TRANSACTIONS**

Upon the motion filed on behalf of the Regents of the University of California (the "Regents") dated June 7, 2002 (Docket #4293), for relief from the automatic stay pursuant to 11 U.S.C. §362(d), to permit the Regents to obtain certain documents produced by the Debtors in the Surety Litigation as defined herein, relating to the "Mahonia" transactions; upon the objection filed by JP Morgan Chase Bank for and on behalf of itself, Mahonia Ltd. and Mahonia Gas Ltd. ("JPMC"); upon the hearing held on June 27, 2002, and the arguments of counsel for the Regents, the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), JPMC and counsel for the Surety Group; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED:

1. That the automatic stay imposed by 11 U.S.C. §362(a) shall be deemed modified to permit the Regents to file a motion before Judge Melinda Harmon in the Newby Class Action (Newby v. Enron Corp., Case No. H-1-3624), requesting (i) the production of all documents produced and that may be produced by the Debtors pursuant to the order entitled Order Modifying Automatic

Stay to Permit Certain Third Party Discovery to Be Obtained From Debtors dated May 15, 2002 entered by this Court; and (ii) transcripts of depositions, including the exhibits marked in depositions, that may be taken in the litigation styled J.P. Morgan Chase Bank et al. v. Liberty Mutual Insurance Co., et al. 01-CIV-15523(JSR) (the "Surety Litigation").

2. The Debtors, JPMC and the Surety Group reserve their respective rights to assert applicable privileges or objections before Judge Melinda Harmon in the Newby Class Action or before Judge Jed S. Rakoff in the Surety Litigation.
3. This order shall not constitute any direction relating to discovery issues that may be brought before Judge Harmon in connection with the Newby Class Action.
4. To the extent Judge Harmon permits the Regents to obtain documents and deposition transcripts, the automatic stay provisions of §362(a) of the Bankruptcy Code are lifted so that the Regents need not obtain further Bankruptcy Court approval to serve a subpoena on Enron.
5. This order shall not serve as precedent for discovery in this Chapter 11 case.

Dated: New York, New York
September 13, 2002

s/Arthur J. Gonzalez
Arthur J. Gonzalez
United States Bankruptcy Judge

DECLARATION OF SERVICE BY E-MAIL, FACSIMILE OR UPS

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on September 23, 2002, declarant served the LEAD PLAINTIFF'S MOTION TO LIFT DISCOVERY STAY FOR LIMITED PRODUCTION OF DOCUMENTS by sending via e-mail, facsimile or UPS overnight to the parties as indicated on the attached Service List, pursuant to the Court's August 7, 2002 Order Regarding Service of Papers and Notice of Hearings.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of September, 2002 at San Diego, California.



Mo Maloney

The Service List

May be Viewed in

the Office of the Clerk